

ASSISTANT ATTORNEY GENERAL
ANTITRUST DIVISION

Department of Justice
Washington, D.C. 20530

MAR 23 1972

Lawrence R. Houston, Esquire
General Counsel
Central Intelligence Agency
Washington, D. C. 20505

Re: United States v. International Business
Machines Corporation, 69 Civ. 200, S.D.N.Y.

Dear Mr. Houston:

On March 16, 1972, the Chief Judge for the Southern District of New York, Honorable David N. Edelstein, convened a hearing in the above-captioned case. In the course of this session, the Court heard further argument of counsel as to what production of Government documents would be required pursuant to an IBM Demand for documents filed in that Court under the Federal Rules of Civil Procedure on October 27, 1970. As you may know, representatives of this Division have been attempting for many months to negotiate with IBM limitations on this Demand which would permit compliance on some reasonable, definitive basis consistent with IBM's right to discovery of documents needed in its defense.

The Court on February 23, 1972, ordered the United States to make some production immediately of documents falling within IBM's initial Demand. Accordingly, we at that time sent a schedule of documents to various offices in specific agencies calling for the production of numerous documents.

OGC SUBJ: LITIGATION, CIVIL

OGC Has Reviewed

DOJ review(s) completed

As a result of the March 16, 1972, hearing, the Court has entered a second order relating to the production of Government documents, a copy of which is enclosed. As you can see from the order, various offices within your agency are required to produce certain information concerning their filing of documents relating to electronic data processing.

We would appreciate your gathering the necessary documents and/or listings as promptly as possible so that we might have time to review them prior to submitting them to counsel for IBM on April 12, 1972.

Any questions you may have as to our compliance with this Court order should be addressed to Edward R. Kenney (Code 187, Extension 2417) of this Division.

Sincerely yours,

Walker B. Comegys

WALKER B. COMEGYS
Acting Assistant Attorney General
Antitrust Division

21 MARCH 1972

PRETRIAL ORDER NO. 3

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

Plaintiff,

v.

INTERNATIONAL BUSINESS MACHINES
CORPORATION,

Defendant.

69 Civ. 200

Pretrial Order No. 3

The parties having been heard, and the Court being duly advised, it is hereby

ORDERED, ADJUDGED AND DECREED that plaintiff produce the following information with respect to the specific offices of the government agencies listed on the attached schedule:

- (1) documents or listings sufficient to show a detailed breakdown of the filing systems, filing procedures and file indices utilized by each such office for documents relating in any way to electronic data processing; and
- (2) documents or listings sufficient to show all personnel who are in charge of the organization, management, and/or maintenance of any files containing documents relating to electronic data processing.

The documents and/or listings described above shall be produced and made available for inspection and copying by counsel for defendant no later than April 12, 1972.

Dated at New York, New York, this 21st day of March, 1972.

s/ David N. Edelstein
DAVID N. EDELSTEIN
Chief Judge

Schedule

Department of Agriculture
Assistant Secretary for Administration

Atomic Energy Commission
Argonne National Laboratory
Bettis Atomic Power Laboratory
Brookhaven National Laboratory
Knolls Atomic Power Laboratory
Lawrence Radiation Laboratory
Los Alamos Scientific Laboratory
Oakridge National Laboratory
Sandia Corporation
Stanford Linear Accelerator Center

✓ Central Intelligence Agency
(All offices except Headquarters, Washington, D.C.
and McLean, Virginia)

Department of Commerce
National Bureau of Standards
National Center for Atmospheric Research

Department of Defense
Assistant Secretary of Defense (Comptroller)
Defense Communications Agency
Defense Intelligence Agency
Defense Supply Agency
National Security Agency

Department of the Air Force
Assistant Secretary of the Air Force for Financial
Management
Aeronautics Systems Division
Armament Development & Test Center
Data Systems Design Center
Directorate of ADPE Selection
Directorate of Data Automation
Eglin Air Force Base
Eastern Test Range

Department of the Air Force (cont'd)

- Electronic Systems Command
- Logistics Command
- Patrick Air Force Base
- Space and Missile Systems Organization
- Space and Missile Test Center
- Systems Command

Department of the Army

- Assistant Secretary of the Army for Financial Managment.
- Advanced Ballistics Missile Defense Agency
- Chief, Communications and Electronics
- Combat Developments Command
- Computer Systems Command
- Computer Systems Support and Evaluation Command
- Continental Army Command
- Corps of Engineers
- Electronics Command
- Management Information Systems Directorate
- Topographic Command
- White Sands Missile Range

Department of the Navy

- Assistant Secretary of the Navy (Financial Management)
- CNO--Information Systems Division and Director ADP Mgmt.
- Naval Air Development Center
- Naval Air Systems Command
- Naval Electronics Systems Command
- Naval Electronics Laboratory
- Naval Observatory
- Naval Ordnance Laboratory
- Naval Radiological Defense Laboratory
- Naval Research Laboratory
- Naval Ship Engineering Center
- Naval Ship Research and Development Center
- Navy Astronautics Group
- Navy Finance Center
- Navy Post Graduate School
- Navy Training Station - Keyport
- Office of Naval Research
- Pacific Missile Range
- U.S. Naval Academy
- Johns Hopkins Univ. - Applied Physics Laboratory

Department of Health, Education, and Welfare

- Health Services Administration
- Social Security Administration

Department of the Interior
Bonneville Power Administration
Bureau of Indian Affairs
Geological Survey

Department of Labor
Assistant Secretary for Administration
Assistant Secretary for Manpower

Department of Transportation
Federal Aviation Administration

Department of the Treasury
Internal Revenue Service

General Accounting Office
Procurement and Systems Acquisition Division

General Services Administration
Federal Supply Service (except the ADP Procurement
Division of the Office of Automated Data
Management Services)
Region 3 Office

National Academy of Science

National Aeronautics and Space Administration
Ames Research Center
Goddard Institute for Space Studies
Jet Propulsion Laboratory
Langley Research Center
Lewis Research Center
Manned Spacecraft Center
Marshall Space Flight Center

National Science Foundation

Smithsonian Institution
Smithsonian Astrophysical Observatory

Office of Management and Budget
Management Information and Computer Systems Division

U.S. Postal Service
Ass't Postmaster General Finance & Administration Dept.
Ass't Postmaster General Operations Department

Veterans Administration
Department of Data Management

OGC 72-0420

22 March 1972

MEMORANDUM FOR THE RECORD

SUBJECT: U. S. v. IBM (69 Civ. 200, S.D.N.Y.)

REFERENCE: Ltr fr Acting Ass't Atty Gen., Antitrust
Division/Justice to LRHouston,
dtd 10 Mar 72, Same Subject

1. The referent advised that the U. S. District Court has ordered the United States to produce certain documentation in response to IBM's initial Demand filed October 27, 1970. It enclosed a set of instructions (Schedule 1), a description of the documentation sought (Schedule 2), and a list of agencies required to conduct a search of their files (Schedule 3). Schedule 3 identifies the Agency and NSA, among others.

2. On 14 March I discussed the matter of Agency compliance with Chuck Briggs in his capacity as Chairman, Information Processing Board. At that time I left with him a copy of the referent together with its enclosures. I asked that some consideration be given to the problems that the required search would pose. I suggested that copies of the referent with its enclosures be distributed among the Information Processing Coordinators within the several Directorates.

STATINTL

3. Today, [] of Briggs' staff said that comments had been received from some, but not all, Information Processing Coordinators. In view of the 15 April deadline set for making the materials available for inspection by IBM representatives, I

STATINTL

requested that the delinquent Coordinators be urged to cooperate. In response to [] direct question, I said that in the circumstances here an Agency search for the type of documentation indicated was required. I hastened to add that if compliance were to pose unique problems for the Agency we could raise them with the Antitrust Division. I pointed out, however, that the immediate need was to determine what, if any, of the described documentation we had and to identify the specific problems that would arise if our documentation is made available to IBM.

STATINTL

[]
Assistant General Counsel

Department of Justice
Washington, D.C. 20530

CYC 72-0379
PRETRIAL NO. 2

MAR 10 1972

Lawrence R. Houston, Esquire
General Counsel
Central Intelligence Agency
Washington, D. C. 20505

Re: United States v. International Business
Machines Corporation, 69 Civ. 200, S.D.N.Y.

Dear Mr. Houston:


On February 23, 1972, the Chief Judge for the Southern District of New York, Honorable David N. Edelstein, convened a hearing in the above captioned case. In the course of this session, the Court heard argument of counsel as to whether production of Government documents would be required pursuant to an IBM Demand for documents filed in that Court under the Federal Rules of Civil Procedure on October 27, 1970. As you may know, representatives of this Division have been attempting for many months to negotiate with IBM limitations on this Demand which would permit compliance on some reasonable, definitive basis consistent with IBM's right to discovery of documents needed in its defense.

The Court has ordered the United States to make some production immediately of documents falling within IBM's initial Demand. Representatives of the Department of Justice have, in accordance with Judge Edelstein's order, prepared the enclosed list of instructions (Schedule 1), and the enclosed schedule of documents that will govern the selection of the materials from the respective agencies (Schedule 2).

OGC SUBJ: LITIGATION, CIVIL

It is requested that you convey to the offices within your agency where search is to be made, specified in enclosed Schedule 3, the urgency of this request. Your continued courtesy and cooperation is most deeply appreciated.

Sincerely yours,

A handwritten signature in dark ink, appearing to read "Bruce B. Wilson", is written over the typed name.

BRUCE B. WILSON
Acting Assistant Attorney General
Antitrust Division

Schedule 1

1. All documents responsive to Schedule 2 found in the files of those specified offices within your agency which are set forth on Schedule 3 are to be made available to IBM for inspection and copying. *DATE OF COMPLETION*
2. The search of the files and records of your agency must be completed no later than April 15, 1972, so that we can arrange for the immediate inspection by IBM representatives of the documents or copies thereof. *DATE*
3. Before examination of any files is undertaken, it is requested that you ascertain whether there are particular paragraphs of Schedule 2 that are more susceptible to immediate search and results than are other paragraphs. If it be your conclusion that some priorities in search by paragraphs of Schedule 2 will yield documents which can be made available to IBM representatives for inspection at a date or dates earlier than April 15, 1972, please make your assignments on that basis and advise us as to the availability of such materials as soon as they are located, so that we can arrange for IBM representatives to begin their review of documents prior to the April 15 date wherever possible. *Prior Availability*
4. You will note that the Schedule 2 calls for documents dated, issued or published during the period January 1, 1961 to January 1, 1972. Where your personnel find that documents falling within the subject matter of Schedule 2 have been sent to storage under routine Government document procedures, it is requested that you advise us in writing as to the location, description and estimated bulk of such materials. Please do not undertake the search of such stored files in the first instance unless the search of all files, current and stored, can be completed by the April 15 date. *Prior*
5. As to any documents selected from agency files in response to Schedule 2 that are classified, or contain classified or proprietary materials, it is requested that these sensitive documents be segregated from the non-sensitive ones. Arrangements will be made for inspection of these documents by IBM. *(CLASSIFIED)*

representatives having appropriate security clearances, and under such conditions that the rights of the Government and third parties to be protected against breaches of security or dissemination of sensitive materials can be fully protected.

6. Any questions you may have as to your agency's compliance with this Court order should be addressed to Edward R. Kenney (Code 187, Extension 2417), Antitrust Division, U. S. Department of Justice, Washington, D. C. 20530.

THIS CASE IS 1
OF PROTECT & NO. 2

Schedule 2

In interpreting each paragraph of this schedule, the following definitions shall apply:

Competitor/Competition: Competitor and competition include past, present and potential competitors and competition.

Electronic Data Processing Product or Service: Electronic Data Processing Product or Service includes any product or service which is peculiar to and an integral part of an electronic data processing system.

Supplier of Any Electronic Data Processing Product or Service: Supplier of Any Electronic Data Processing Product or Service includes each person, including the United States, which supplied or supplies or has offered to supply any electronic data processing product or service.

Electronic Data Processing System: An electronic data processing system consists of a machine or a group of automatically intercommunicating machine units capable of entering, receiving, storing, classifying, computing and/or recording data, which system includes at least one central processing unit and one or more storage facilities, together with various input and output equipment.

Documents requested herein shall be those dated, issued or published from January 1, 1961 to January 1, 1972.

Documents To Be Produced

1. The following documents concerning any supplier of any electronic data processing system:

(a) analyses, appraisals, studies, reports or surveys relating to the relative strengths or weaknesses of that supplier in any segment of the electronic data processing industry, or the relative growth, profits or position of that supplier in such industry;

(b) analyses, appraisals, studies, reports or ^{Supplier} surveys relating to the ^{History} history of any such supplier in any segment of the electronic data processing ^{Product} industry, including its entry into or exit from any part of that industry and any barriers, deterrents (or the lack thereof) to such entry or exit.

2. All analyses, appraisals, studies, reports or ^{EAP} surveys relating to any electronic data processing system, or basic major part thereof, which relate to:

(a) ^{evaluation} any evaluation thereof, including the history, life span, availability, performance or specifications of such products (but excluding mechanical, maintenance and day-to-day performance matters);

(b) ^{comparison} any comparison involving, or competition between, any such product and any other product;

(c) the number, kind or variety thereof ^{Number} available;

(d) ^{Technological Change} any substantial technological change in or cancellation or withdrawal thereof.

3. All analyses, appraisals, studies, reports or surveys relating to the procurement or use of any electronic data processing system, ^{Procurement} or basic major part thereof, by any customer including any governmental agency with respect to: ^{OF EAP}

(a) the organization, management, evaluation, selection, transfer or disposal of such product by such customer;

(b) the capacity or willingness, or lack thereof, of any such customer to purchase or lease any such product from any supplier or to itself make, perform or supply any such product thereof instead of or in addition to its existing or then existing supplier;

(c) the ability or capacity, or lack thereof, of any such customer to use, evaluate or select among, or to transfer or dispose of, any such product;

(d) the prices, terms, or conditions for any electronic data processing product offered, negotiated, considered, sought, accepted or rejected by any such customer. XX

4. All analyses, appraisals, studies, reports or surveys relating to any electronic data processing product or grouping thereof which show or tend to show the market or segment of commerce in which such products compete including, but not limited to:

(a) the existence of a definable "market", "submarket" or "part" of commerce in which such products compete;

(b) the identity or nature of any product, service, supplier, purchaser or customer therein;

(c) the nature, extent or effectiveness of competition therein;

(d) the relative or absolute position of any supplier therein;

(e) any market power of any supplier of any electronic data processing product or service therein;

(f) any acquisition or maintenance or any attempt or intent to acquire or maintain market power therein;

(g) any possibility or probability that any supplier of any electronic data processing product or service might or may injure or destroy competition therein or acquire or maintain any market power therein;

(h) any act, policy, practice, course of conduct, dealing or transaction which might accomplish or contribute to the injury or destruction of competition or the acquisition or maintenance of market power therein.

5. All documents which show any request or demand by any customer, including any governmental agency, for prices or a pricing system whereby two or more electronic

data processing products or services are included in a single price.

6. All documents relating to any announcement by any supplier of a new electronic data processing product or service, or a change or modification of a prior announced electronic data processing product or service, including:

(a) the time, timing or content of such announcement;

(b) any change in or cancellation of any electronic data processing product or service or any specification or capability thereof;

(c) the satisfaction or failure to satisfy any test or other standard;

(d) any manner in which such announcement was premature in terms of the design, development or availability of such product or service.

7. All documents which show the percentage return (whether profit or loss) on investment, or on revenue realized or anticipated, by any supplier of any electronic data processing product or service on any such product or service or the relationship any such return has or has not to any average or standard of comparison or to the return on any other data processing product or service. x x x

8. All documents which show any giving or offering by any supplier of any electronic data processing product or service of a price, product, service, term, condition, financing arrangement, or other consideration to any customer which is not offered or otherwise made available to all customers.

21 MARCH 1972

PRETRIAL ORDER NO. 2

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

Plaintiff,

v.

69 Civ. 200

INTERNATIONAL BUSINESS MACHINES
CORPORATION,

Defendant.

Pretrial Order No. 2

Defendant having filed a Motion for Production of Documents on October 27, 1970 and the parties having been heard on such motion, and the Court being duly advised, it is hereby

ORDERED, ADJUDGED AND DECREED that plaintiff produce the documents described in the attached Schedule 2 with respect to the specific offices of the government agencies listed on the attached Schedule 1.

The documents described in Schedule 2 shall be produced and made available for inspection and copying by counsel for defendant beginning no later than April 15, 1972.

Dated at New York, New York, this 21st day of March, 1972.

s/ David N. Edelstein
DAVID N. EDELSTEIN
Chief Judge

Rec'd from Justice
5 APRIL 72

Schedule 1

Atomic Energy Commission

Headquarters, Washington, D.C. and Germantown, Maryland

National Aeronautics & Space Administration

NASA Headquarters, 300 7th Street, S.W., Washington, D.C.

Goddard Space Center

John F. Kennedy Space Center

Central Intelligence Agency

Headquarters, Washington, D.C. and McLean, Virginia

Department of Commerce

NOAA Headquarters, Rockville, Maryland

Department of Health, Education & Welfare

National Institutes of Health, Bethesda, Maryland

National Security Agency

Headquarters, Fort Meade, Maryland

General Services Administration

Central Office, Federal Supply Service, ADP Procurement
Division, Washington, D.C.

Department of Transportation

Headquarters, U.S. Coast Guard, Washington, D.C.

Department of Defense

Advanced Research Project Agency, Arlington, Virginia

ADPESO, The Pentagon, Washington, D.C.

Army Materiel Command, Philadelphia, Pennsylvania

Naval Weapons Laboratory, Dahlgren, Virginia

Directorate of Defense Research and Engineering,

Office of the Deputy Director for Electronics

and Information Systems, The Pentagon,

Washington, D.C.

**Department of Justice (including Federal Bureau of
Investigation)**

Schedule 2

In interpreting each paragraph of this schedule, the following definitions shall apply:

Competitor/Competition: Competitor and competition include past, present and potential competitors and competition.

Electronic Data Processing Product or Service: Electronic Data Processing Product or Service includes any product or service which is peculiar to and an integral part of an electronic data processing system.

Supplier of Any Electronic Data Processing Product or Service: Supplier of Any Electronic Data Processing Product or Service includes each person, including the United States, which supplied or supplies or has offered to supply any electronic data processing product or service.

Electronic Data Processing System: An electronic data processing system consists of a machine or a group of automatically intercommunicating machine units capable of entering, receiving, storing, classifying, computing and/or recording data, which system includes at least one central processing unit and one or more storage facilities, together with various input and output equipment.

Documents requested herein shall be those dated, issued or published from January 1, 1961 to January 1, 1972.

Documents To Be Produced

1. The following documents concerning any supplier of any electronic data processing system:

(a) analyses, appraisals, studies, reports or surveys relating to the relative strengths or weaknesses of that supplier in any segment of the electronic data processing industry, or the relative growth, profits or position of that supplier in such industry;

(b) analyses, appraisals, studies, reports or surveys relating to the history of any such supplier in any segment of the electronic data processing industry, including its entry into or exit from any part of that industry and any barriers, deterrents (or the lack thereof) to such entry or exit.

2. All analyses, appraisals, studies, reports or surveys relating to any electronic data processing system, or basic major part thereof, which relate to:

(a) any evaluation thereof, including the history, life span, availability, performance or specifications of such products (but excluding mechanical, maintenance and day-to-day performance matters);

(b) any comparison involving, or competition between, any such product and any other product;

(c) the number, kind or variety thereof available;

(d) any substantial technological change in or cancellation or withdrawal thereof.

3. All analyses, appraisals, studies, reports or surveys relating to the procurement or use of any electronic data processing system, or basic major part thereof, by any customer including any governmental agency with respect to:

(a) the organization, management, evaluation, selection, transfer or disposal of such product by such customer;

(b) the capacity or willingness, or lack thereof, of any such customer to purchase or lease any such product from any supplier or to itself make, perform or supply any such product thereof instead of or in addition to its existing or then existing supplier;

(c) the ability or capacity, or lack thereof, of any such customer to use, evaluate or select among, or to transfer or dispose of, any such product;

(d) the prices, terms, or conditions for any electronic data processing product offered, negotiated, considered, sought, accepted or rejected by any such customer.

4. All analyses, appraisals, studies, reports or surveys relating to any electronic data processing product or grouping thereof which show or tend to show the market or segment of commerce in which such products compete including, but not limited to:

(a) the existence of a definable "market", "submarket" or "part" of commerce in which such products compete;

(b) the identity or nature of any product, service, supplier, purchaser or customer therein;

(c) the nature, extent or effectiveness of competition therein;

(d) the relative or absolute position of any supplier therein;

(e) any market power of any supplier of any electronic data processing product or service therein;

(f) any acquisition or maintenance or any attempt or intent to acquire or maintain market power therein;

(g) any possibility or probability that any supplier of any electronic data processing product or service might or may injure or destroy competition therein or acquire or maintain any market power therein;

(h) any act, policy, practice, course of conduct, dealing or transaction which might accomplish or contribute to the injury or destruction of competition or the acquisition or maintenance of market power therein.

5. All documents which show any request or demand by any customer, including any governmental agency, for prices or a pricing system whereby two or more electronic

data processing products or services are included in a single price.

6. All documents relating to any announcement by any supplier of a new electronic data processing product or service, or a change or modification of a prior announced electronic data processing product or service, including:

(a) the time, timing or content of such announcement;

(b) any change in or cancellation of any electronic data processing product or service or any specification or capability thereof;

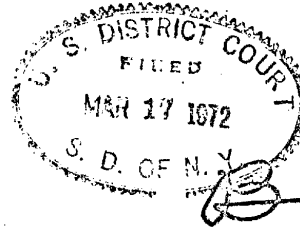
(c) the satisfaction or failure to satisfy any test or other standard;

(d) any manner in which such announcement was premature in terms of the design, development or availability of such product or service.

7. All documents which show the percentage return (whether profit or loss) on investment, or on revenue realized or anticipated, by any supplier of any electronic data processing product or service on any such product or service or the relationship any such return has or has not to any average or standard of comparison or to the return on any other data processing product or service.

8. All documents which show any giving or offering by any supplier of any electronic data processing product or service of a price, product, service, term, condition, financing arrangement, or other consideration to any customer which is not offered or otherwise made available to all customers.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK



UNITED STATES OF AMERICA

Plaintiff,

-against-

INTERNATIONAL BUSINESS MACHINES
CORPORATION,

Defendant.

69 Civ. 200

Civ. No. 72-344

ORDER No 1

IT IS HEREBY ORDERED that both plaintiff and defendant shall henceforth preserve and secure from destruction all documents, writings, recordings or other records of any kind whatsoever which relate in any way to electronic data processing or to any electronic data processing product or service until further Order of this Court.

March 16, 1972.

New York, N.Y.

David N. Edelstein

David N. Edelstein
Chief Judge, United States
District Court

*Rec'd. From Justice ✓
5 APRIL '72*

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

Signed
Filed
3/30/72

UNITED STATES OF AMERICA,

Plaintiff,

-against-

INTERNATIONAL BUSINESS MACHINES
CORPORATION,

Defendant.

69 Civ. 200
Civ. No. 72-344

~~PROPOSED~~ ORDER AMENDING
PRETRIAL ORDER NO. 1
UPON CONSENT

ORDER AMENDING PRETRIAL ORDER NO. 1
UPON CONSENT

WHEREAS both plaintiff and defendant undertake that they have taken immediate steps to comply with Pretrial Order No. 1 entered by this Court on March 16, 1972; and

WHEREAS both plaintiff and defendant have ascertained from their operating personnel that certain bulky, intermediate, subsidiary and underlying documents, records and recordings prepared in the course of routine business operations are produced and normally destroyed in such day-to-day volume that their continued retention will endanger and prevent the continuation of the normal and efficient business activities of plaintiff and defendant; and

WHEREAS certain types of such records are identifiable by category as hereinafter set forth and may be encompassed within Pretrial Order No. 1, but both the parties to this action agree that their destruction according to normal business procedures will not prejudice either party to this lawsuit;

IT IS HEREBY ORDERED, UPON CONSENT OF THE PARTIES, THAT THE FOLLOWING ITEMS MAY BE FORTHWITH EXEMPTED FROM PRETRIAL ORDER NO. 1:

1. Magnetic tapes or disks used in the development of com-

Rec'd from Justice
5 April 72

puter programs

~~EXCEPT THAT~~ tapes or disks constituting a finished programming product are to remain subject to the Court's Pretrial Order No. 1.

2. Magnetic tapes or disks used only as an interim step in a data processing operation.
3. Ancillary/auxillary tapes or disks used in data processing operations, provided the data can be recreated from source records.
4. Magnetic Tapes and Disks Being Updated in the Normal Course of Data Processing Operations

EXCEPT THAT: the latest version of any such tape or disk which is no longer being updated shall remain subject to the Court's Pretrial Order No. 1.

5. Any magnetic tapes or disks used in data processing operations, provided the data on the tape or disk has been completely printed out.
6. Tabulating Cards Used Only as an Interim Step in a Data Processing Operation
7. Tabulating Cards Used in Programming, Logic, Test and Diagnostic Operations
8. Certain Papers Not Ordinarily Filed or Retained

~~Drafts or other work papers which in the ordinary course of business would not have been filed or retained;~~

~~EXCEPT THAT: any such draft or work paper which has been sent to any other person for information or review must be retained subject to the Court's Pretrial Order No. 1.~~

9. Copies of Printed Material Prepared by Third Parties for General Public Distribution

EXCEPT THAT: any copy to which information has been added must be retained subject to the Court's Pretrial Order No. 1.

We consent to and request the making and entry of the foregoing Order:

For the Plaintiff:

For the Defendant:

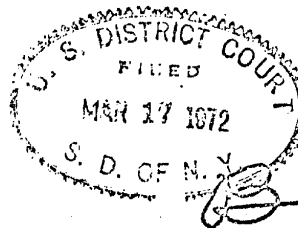
s/ Raymond H. Carlson
Antitrust Division
Department of Justice

s/ F. A. O. Schwarz, Jr.
Cravath, Swaine & Moore

Dated, March 31, 1972

s/ David N. Edelstein
David N. Edelstein
Chief Judge

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK



UNITED STATES OF AMERICA

Plaintiff,

-against-

INTERNATIONAL BUSINESS MACHINES
CORPORATION,

Defendant.

69 Civ. 200

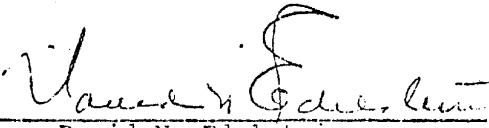
Civ. No. 72-344

ORDER No 1

IT IS HEREBY ORDERED that both plaintiff and defendant shall henceforth preserve and secure from destruction all documents, writings, recordings or other records of any kind whatsoever which relate in any way to electronic data processing or to any electronic data processing product or service until further Order of this Court.

March 16, 1972.

New York, N.Y.


David N. Edelstein
Chief Judge, United States
District Court

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

Plaintiff,

-against-

INTERNATIONAL BUSINESS MACHINES
CORPORATION,

Defendant.

69 Civ.
Civ. No. 7

ORDER
PRETRIAL ORDER
UPON CONSENT

PRETRIAL ORDER NO. 1

WHEREAS both plaintiff and defendant undertake that they have taken immediate steps to comply with Pretrial Order No. 1 entered by this Court on March 16, 1972; and

WHEREAS both plaintiff and defendant have ascertained from their operating personnel that certain bulky, intermediate, subsidiary and underlying documents, records and recordings prepared in the course of routine business operations are produced and normally destroyed in such day-to-day volume that their continued retention will endanger and prevent the continuation of the normal and efficient business activities of plaintiff and defendant; and

WHEREAS certain types of such records are identifiable by category as hereinafter set forth and may be encompassed within Pretrial Order No. 1, but both the parties to this action agree that their destruction according to normal business procedures will not prejudice either party to this lawsuit;

IT IS HEREBY ORDERED, UPON CONSENT OF THE PARTIES, THAT THE FOLLOWING ITEMS MAY BE FORTHWITH EXEMPTED FROM PRETRIAL ORDER NO. 1:

1. Magnetic tapes or disks used in the development of com-

~~EXCEPT THAT:~~ tapes or disks constituting a finished programming product are to remain subject to the Court's Pretrial Order No. 1.

2. Magnetic tapes or disks used only as an interim step in a data processing operation.
3. Ancillary/auxiliary tapes or disks used in data processing operations, provided the data can be recreated from source records.
4. Magnetic Tapes and Disks Being Updated in the Normal Course of Data Processing Operations

EXCEPT THAT: the latest version of any such tape or disk which is no longer being updated shall remain subject to the Court's Pretrial Order No. 1.

5. Any magnetic tapes or disks used in data processing operations, provided the data on the tape or disk has been completely printed out.
6. Tabulating Cards Used Only as an Interim Step in a Data Processing Operation
7. Tabulating Cards Used in Programming, Logic, Test and Diagnostic Operations
8. Certain Papers Not Ordinarily Filed or Retained

~~Drafts or other work papers which in the ordinary course of business would not have been filed or retained;~~

~~EXCEPT THAT: any such draft or work paper which has been sent to any other person for information or review must be retained subject to the Court's Pretrial Order No. 1.~~

9. Copies of Printed Material Prepared by Third Parties for General Public Distribution

EXCEPT THAT: any copy to which information has been added must be retained subject to the Court's Pretrial Order No. 1.

We consent to and request the making and entry of the foregoing Order:

For the Plaintiff:

For the Defendant:

s/ Raymond U. Carlson
Antitrust Division
Department of Justice

s/ F. A. C. Schwarz, Jr.
Cravath, Swaine & Moore

Dated, March 31, 1972

s/ David N. Edelstein
David N. Edelstein
Chief Judge